LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — MEASURE OF DAMAGES FOR BREACH OF COVENANT OF QUIET ENJOYMENT. — An action was brought by a lessee for breach of covenant of quiet enjoyment. *Held*, that the settled rule in New York is that the lessee can recover nominal damages only, with nothing for the value of the lease or improvements. *Thorley* v. *Pabst Brewing Co.*, 179 Fed. 338 (C. C. A., Second Circ.).

In an action by a vendee against the vendor for breach of covenant of quiet enjoyment, the measure of damages is the purchase price and interest, plus expenses incurred in defending the title. *Willson* v. *Willson*, 25 N. H. 229. Applying the same rule in actions between lessor and lessee, the New York courts have always given the lessee merely nominal damages, where nothing was paid for the lease, unless there has been bad faith on the part of the lessor. *Mack* v. *Patchin*, 42 N. Y. 167. But the general rule is, that the lessee can recover the value of the unexpired term, less the rent reserved. *Riley* v. *Hale*, 158 Mass. 240; *Lock* v. *Furze*, Harr. & R. 379. *Contra*, *Lanigan* v. *Kille*, 97 Pa. St. 120. As between purchaser and seller, it would be unfair to require the seller to pay the value of the land at the time of eviction, on account of costly improvements which a purchaser might have made; but this is not likely to be the case in the ordinary lease, and it seems the better rule to give the lessee full compensation for his loss.

MORTGAGES — EQUITY OF REDEMPTION — CLOGGING RIGHT BY COVENANT NOT TO REDEEM BEFORE CERTAIN DATE. — The plaintiff mortgaged his public-house and covenanted to buy all liquors from the mortgagee, and not to redeem for twenty-eight years. The mortgagee, however, upon any one of a great number of contingencies, might sell without notice, and subject to the "tie." *Held*, that the covenant not to redeem was unreasonable and void. *Morgan* v. *Jeffreys*, 74 J. P. 154 (Eng., Ch. D., Feb. 23, 1910).

Stipulations as to the time of repayment may clog the equity of redemption by making the mortgage irredeemable either (1) after a certain date, or (2) before a certain date. Stipulations of the former kind are universally held void. *Bradbury* v. *Davenport*, 114 Cal. 598, 599. Upon agreements of the latter type there has been remarkably little comment. Text writers seem to assume unqualifiedly that they are good. 2 JONES, MORTGAGES, 6 ed., § 1052. The true doctrine, however, seems to be that they are good only if the time fixed is reasonable, and the agreement is not otherwise unconscionable. Reasonableness is so dependent upon the attendant circumstances, and authorities are so few, that it cannot be accurately defined. The following limitations have been regarded as reasonable: *Brown* v. *Cole*, 14 Sim. 427 (one year); *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307 (five years); *Saunders* v. *Frost*, 5 Pick. (Mass.) 259, 267 (six years, — *dictum*); *Teevan* v. *Smith*, 20 Ch. D. 724, 729 (five to seven years, — *dictum*); *Abbe* v. *Goodwin*, 7 Conn. 377 (fourteen years, even though the mortgagor tendered interest in full to the end of the term). Only one decision, besides that in the principal case, has been found holding such a stipulation void. *Talbot* v. *Braddill*, 1 Vern. 183 and 394 (thirty-one years). But the rule suggested seems consistent with the general attitude of equity toward the borrower. See 1 COOTE, MORTGAGES, 13.

MORTGAGES — FORECLOSURE — JUNIOR MORTGAGEE'S RIGHT TO SURPLUS. — A foreclosure sale was conducted by a receiver, who held a surplus after the debt of the first mortgagee was satisfied. The surplus was claimed by the mortgagor and the junior mortgagee, who had not applied to have the receivership extended for his benefit. *Held*, that the junior mortgagee is entitled to the surplus. *Vogel* v. *Nachemson*, 137 N. Y. App. Div. 200.

For a criticism of a case reaching the opposite result, see 21 HARV. L. REV. 61.